

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

UNITED STATES OF AMERICA,)
) No. 3:08-CR-142
Plaintiff,)
) Knoxville, TN
vs.) April 30, 2010
) 9:00 a.m.
DAVID C. KERNELL,)
)
Defendant.)

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE THOMAS W. PHILLIPS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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(NOTE: Unless provided to the Court Reporter, all names
are spelled to the best phonetic approximation.)

1 This cause came on for hearing on the 30th
2 day of April 2010, in the United States District Court
3 for the Eastern District of Tennessee, Northern
4 Division, the Honorable Thomas W. Phillips presiding.

5 The Court having been duly opened, the
6 following proceedings were had, to-wit:

7 THE COURT: Counsel, before the Jury gets here,
8 let's decide what to do about the Allen Charge.

9 Mr. Weddle, have you received a copy of
10 Mr. Davies' suggested Allen Charge?

11 MR. WEDDLE: I have, Your Honor.

12 THE COURT: And what is the Government's
13 position?

14 MR. WEDDLE: Well, our position is that if the
15 Court gives the Allen Charge, the Court should give the
16 pattern instruction. There's no reason to deviate from
17 the pattern instruction.

18 THE COURT: Okay. Well, the Sixth Circuit
19 Court of Appeals has approved the pattern jury charge
20 that's in the Pattern Jury Instruction Manual. And I
21 have no intention to deviate from that pattern jury
22 instruction.

23 And Mr. Davies, your suggested Allen Charge
24 encourages the jury not to reach a verdict. The purpose
25 of the Allen Charge is to encourage them to reach a

1 verdict. So I will overrule your request.

2 Now let's talk about whether we should give the
3 Allen Charge. Your position, Mr. Davies?

4 MR. DAVIES: Your Honor, as I stated yesterday,
5 under the circumstances, I don't think it's appropriate,
6 particularly given the last communication from the jury
7 that indicated that there was some identified group
8 that, at least some of the jurors were stating, were
9 having a problem.

10 So I think that under the circumstances, the
11 Allen Charge would seem to be too directed towards the
12 group that was identified in the communication from the
13 jury. I think that's what makes it a little different
14 from most circumstances where the jury is having trouble
15 reaching a verdict.

16 And just with regard to... I certainly did not
17 intend to encourage them not to reach a verdict. I just
18 think the instruction needs to be clear that you're
19 not -- that the Court is not telling them that they have
20 to, because that, of course, is not the law.

21 THE COURT: Thank you, Mr. Davies. I realize
22 that you're doing your job for your client, and doing it
23 very well.

24 Mr. Weddle, your position with regard to the
25 Allen Charge?

1 MR. WEDDLE: Well, Your Honor, I think I concur
2 with the Court's statement yesterday, that we're
3 probably getting very pretty close to that point in the
4 trial where we should give them that instruction. I
5 guess I would say that maybe not quite yet.

6 They've indicated one time that they were
7 deadlocked as to Count 1. And then when the Court gave
8 the partial verdict instruction, I think that they
9 communicated that they would like to continue to
10 deliberate rather than return a partial verdict. And
11 that was late yesterday afternoon.

12 So perhaps we should allow them to continue to
13 deliberate a little more this morning on fresh minds.
14 And then at some point after some brief period this
15 morning, if they still are having trouble, and they
16 indicate that there is an impasse, then I think an Allen
17 Charge would be appropriate at that time.

18 THE COURT: Okay. Mr. Davies?

19 MR. DAVIES: Your Honor, I think if the Court
20 is going to give it, it would be better to give it first
21 thing this morning before they start. It will seem less
22 unusual that way.

23 And I think the case law indicates that the
24 further along in the deliberations the Allen Charge is
25 given, the more coercive that it becomes. So it seems

1 like if the Court is going to give it, it just makes
2 sense to do it first thing in the morning. It won't
3 seem like such an unusual charge if the Court is simply
4 reminding them what their obligations are.

5 So if you're going to give it, I ask that it be
6 done before they start this morning.

7 THE COURT: Thank you, Mr. Davies. Well, as
8 usual, you're not in agreement.

9 MR. WEDDLE: Well, Your Honor, I guess I will
10 say that the defendant was objecting to the giving of
11 the charge. Now that he requests that it be given now,
12 maybe it is appropriate to give it now, since that is
13 the defendant's preference.

14 And we -- obviously, the case law suggests that
15 it is not to be viewed as coercive. So if that's the
16 defendant's position that he prefer that it be given
17 now, we don't have any objection to that. Obviously, we
18 leave it to the Court's discretion.

19 THE COURT: Well, I do believe that Mr. Davies
20 has a very valid point. Giving it the first thing this
21 morning would probably be less coercive than giving it
22 later in the day.

23 So I think you're right, Mr. Davies. I'll give
24 it as soon as the jury assembles.

25 Now, do we have all the jurors here?

1 DEPUTY CLERK: If you would like for me to
2 check, I can do that now.

3 THE COURT: Yes, if you would, please.

4 DEPUTY CLERK: Yes, they are all here.

5 THE COURT: Counsel, I'm going to change the
6 introduction to the charge very slightly. Do you have
7 it before you?

8 MR. DAVIES: Yes, Your Honor.

9 THE COURT: Okay. I'm going to state, "Members
10 of the Jury, it is now time for you to return to the
11 jury room." Rather than, "I'm going to ask that you
12 return."

13 MR. WEDDLE: Okay.

14 THE COURT: So that it will appear that it's
15 more in the ordinary course of affairs. Do any of you
16 have a problem with that?

17 MR. DAVIES: No, Your Honor.

18 MR. WEDDLE: No, Your Honor.

19 THE COURT: Okay. Let's bring them in, please.

20 DEPUTY CLERK: All rise.

21 (Jury in at 9:05.)

22 JURY CHARGE

23 THE COURT: You may be seated, ladies and
24 gentlemen.

25 Good morning, Ladies and Gentlemen of the Jury.

1 It's a beautiful day out there today.

2 Members of the Jury, it is now time for you to
3 return to the jury room and deliberate further. I
4 realize that you're having some difficulty reaching
5 unanimous agreement, but that is not unusual. And
6 sometimes after further discussion, jurors are able to
7 work out their differences and agree.

8 Please keep in mind how very important it is
9 for you to reach unanimous agreement. If you cannot
10 agree, and this case is tried again, there is no reason
11 to believe that any new evidence will be presented, or
12 that the next 12 jurors will be any more conscientious
13 and impartial than you are.

14 Let me remind you that it is your duty as
15 jurors to talk with each other about the case, to listen
16 carefully and respectfully to each other's views, and to
17 keep an open mind as you listen to what your fellow
18 jurors have to say.

19 And let me remind you that it is your duty to
20 make every reasonable effort you can to reach unanimous
21 agreement.

22 Each of you, whether you are in majority or the
23 minority, are to seriously reconsider your position in
24 light of the fact that other jurors who are just as
25 conscientious and impartial as you are, have come to a

1 different conclusion.

2 Those of you who believe that the government
3 has proved the defendant guilty beyond a reasonable
4 doubt should stop and ask yourselves if the evidence is
5 really convincing enough, given that the other members
6 of the jury are not convinced.

7 And those of you who believe that the
8 government has not proved the defendant guilty beyond a
9 reasonable doubt should stop and ask yourselves if the
10 doubt you have is a reasonable one, given that other
11 members of the jury do not share your doubt.

12 None of you should hesitate to change your mind
13 if after reconsidering things you were convinced that
14 other jurors are right and that your original position
15 was wrong. But remember this, do not ever change your
16 mind just because other jurors see things differently,
17 or just to get the case over with.

18 As I told you before, in the end, your vote
19 must be exactly that, your own vote. As important as it
20 is for you to reach unanimous agreement, it is just as
21 important that you do so honestly and in good
22 conscience.

23 What I have just said is not meant to rush or
24 pressure you into agreeing on a verdict. Take as much
25 time as you need to discuss things. There is no hurry.

1 I will ask you at this time to return to the
2 jury room and resume your deliberations. And
3 Mr. Foreperson, you can decide when the jury will take
4 breaks. And you may also decide when to take your lunch
5 break, and what time the jury is to return. Thank you,
6 Ladies and Gentlemen of the Jury. You are excused at
7 this time.

8 DEPUTY CLERK: All rise.
9 (Jury out at 9:09.)

10 THE COURT: We are in recess.
11 (Court is in recess.)

12 DEPUTY CLERK: Please come to order.

13 THE COURT: Well, ladies and gentlemen, we do
14 have a communication from the jury. And the
15 communication states as follows:

16 "After continued discussion and debate, the
17 jury remains deadlocked regarding Count 1. As
18 previously stated, we have reached unanimous decisions
19 on Counts 2,3, and 4, and are willing to share the
20 results with the Court."

21 Ladies and gentlemen, if you'll be seated,
22 please.

23 I think what the jury is saying to us, Counsel,
24 is that they continue to be deadlocked as to Count 1.
25 Under Rule 26.3 of the Federal Rules of Criminal

1 Procedure, before ordering a mistrial, the Court must
2 give each defendant, and the Government, an opportunity
3 to comment on the propriety of the order, to state
4 whether that party consents, or objects, and to suggest
5 alternatives.

6 Mr. Weddle, on behalf of the Government, what
7 is the Government's position as to declaring a mistrial
8 as to Count 1?

9 MR. WEDDLE: Well, Your Honor, I think it might
10 be more appropriate to defer that to the defendant.

11 Obviously, the concern we would have is based
12 on a possible double jeopardy bar. In the event of a
13 retrial we would intend... From the circumstances we
14 now know, we would intend to retry that count.

15 And, of course, that's our concern as to
16 whether there would be an interposition of a double
17 jeopardy challenge to that. And that largely depends on
18 whether the defendant would agree, or object, to a
19 mistrial. So it might be more appropriate to deal with
20 that.

21 But certainly, you know, some of the factors
22 that are involved are the length of deliberations. This
23 jury has clearly deliberated a long time. Whether they
24 are hopelessly deadlocked... Certainly the Court may
25 inquire of the jury whether they believe they are able

1 to reach a unanimous verdict. It appears now, this is
2 the second communication, they are deadlocked on this
3 count.

4 Whether there are any alternatives... To my
5 mind, I can't think of any alternatives at this point.

6 But again, our concern would, of course, be a
7 possible double jeopardy bar. And I think what I'm also
8 advising the defendant and the Court is that based on
9 circumstances we now know, if the Court were to declare
10 a mistrial on a hung jury, we would intend to retry the
11 case.

12 THE COURT: As to Count 1?

13 MR. WEDDLE: Yes, sir.

14 THE COURT: Okay. Mr. Davies, your position?

15 MR. DAVIES: Your Honor, this being the second
16 communication that the jury is deadlocked, and the Court
17 having given the Allen Charge, the jury has been
18 deliberating since Tuesday. Your Honor, I see no reason
19 to question the jury's communication to the Court that
20 they are, in fact, deadlocked. And I think it would be
21 appropriate to declare a mistrial as to Count 1.

22 THE COURT: Thank you, Mr. Davies.

23 Mr. Kernell, what is your feeling in regard to
24 declaring a mistrial as to Count 1.

25 MR. KERNELL: I agree with that.

1 THE COURT: Okay. Thank you, Mr. Kernell.

2 Well, I think that we have exhausted all
3 alternatives in this matter. The jury has returned, or
4 is ready to return, a partial verdict as to the counts
5 upon which they have reached a unanimous agreement.

6 I will question the jurors in just a moment to
7 see if there's any hope that they will be able reach a
8 unanimous verdict as to Count 1. But I did want to
9 comply with the Rule and give you an opportunity to file
10 any objections, or statements, that you may have in
11 regard to a mistrial before it's actually declared as to
12 Count 1. And I will check with you again before we
13 continue.

14 Okay. We'll bring the jury in, please.

15 DEPUTY CLERK: All rise.

16 (Jury in at 2:50.)

17 THE COURT: You may be seated, ladies and
18 gentlemen.

19 Members of the Jury, I have received the
20 following communication from the jury:

21 "After continued discussion and debate, the
22 jury remains deadlocked regarding Count 1.

23 As previously stated, we have reached unanimous
24 decisions on Counts 2, 3, and 4, and are willing to
25 share the results with the Court."

1 If the Foreperson would please stand.

2 Mr. Foreperson, has the jury reached a unanimous verdict
3 as to three of the four counts in the Indictment?

4 JURY FOREPERSON: Yes, Your Honor.

5 THE COURT: And you have reached unanimous
6 verdicts as to Counts 2, 3, and 4? Is that correct,
7 sir?

8 JURY FOREPERSON: Yes, Your Honor.

9 THE COURT: And do you wish to make a return on
10 those counts at this time?

11 JURY FOREPERSON: Yes, we do.

12 THE COURT: Okay. If you'll pass the Verdict
13 Form to the marshal, please.

14 Okay. Marshal, if you would hand the Verdict
15 Form back to the Foreperson, please.

16 And Mr. Foreperson, if you would read the
17 Verdict Form to the assembled parties as to each verdict
18 to which you have reached unanimous agreement.

19 VERDICT

20 MR. FOREPERSON: Yes, Your Honor.

21 We, the members of the jury, find unanimously,
22 and from all the evidence, as follows:

23 Count 2. As to Count 2 of the Indictment
24 charging violation of §18 U.S.C. 1343, Wire Fraud, we
25 find the defendant, David C. Kernell, not guilty.

1 3(A). As to the lesser included offense of
2 Count 3 charging a violation of §18 U.S.C. 1030,
3 unlawfully obtaining information from a protected
4 computer as a result of unauthorized access to a
5 computer, we found the defendant, David C. Kernell,
6 guilty.

7 As to Count 4 of the Indictment charging a
8 violation of §18 U.S.C. 1519, Destruction, alteration,
9 or falsification of records in Federal investigations,
10 we found the defendant, David C. Kernell, guilty.

11 THE COURT: Thank you, Mr. Foreperson. If you
12 would give the Verdict Form back to the Marshal, please.

13 THE COURT: Members of the Jury, I want to make
14 sure that this verdict is the verdict of each of you.
15 If this is the verdict of each member of the jury as to
16 Counts 2, 3, and 4 of the Indictment, would you please
17 so indicate at this time by raising your right hand.

18 Let the record reflect that each member of the
19 jury raised his, or her, right hand.

20 Ladies and Gentlemen of the Jury, I wish to
21 thank you for your time and effort spent in helping the
22 cause of justice in this case. You have been very
23 patient and attentive. And on behalf of the United
24 States District Court for the Eastern District of
25 Tennessee, I wish to thank you for your willingness to

1 do your civic duty by serving on the jury in this case.

2 Now at this time, Mr. Foreperson, if you would
3 please stand again.

4 Mr. Foreperson, without relating in any way any
5 of the proceedings which have taken place in the secrecy
6 of the jury room, how the jury has voted on any issue,
7 or indicating in any way the split of the vote, do you
8 believe that there is a probability that the jury can
9 reach a verdict within a reasonable time? Or do you
10 believe that the jury is hopelessly deadlocked as to
11 Count 1 of the Indictment?

12 In other words, do you believe that there is a
13 prospect of the jury reaching a verdict within a
14 reasonable period of time as to Count 1?

15 JURY FOREPERSON: Your Honor, I do not believe
16 we will be able to reach a verdict -- a unanimous
17 decision, no, sir.

18 THE COURT: Thank you, Mr. Foreperson.

19 Now, Ladies and Gentlemen of the Jury, I need
20 to ask the same question to each of you.

21 Juror No. 279, do you believe that there is a
22 probability that the jury can reach a verdict within a
23 reasonable time as to Count 1 of the Indictment? Or do
24 you believe that the jury is hopelessly deadlocked on
25 Count 1?

1 JUROR 279: Your Honor, I believe that the jury
2 is hopelessly deadlocked.

3 THE COURT: Thank you, Juror No. 279.

4 Juror No. 281, do you believe that there is a
5 probability that the jury can reach a verdict within a
6 reasonable time as to Count 1? Or do you believe that
7 the jury is hopelessly deadlocked as to Count 1?

8 JUROR NO. 281: Hopelessly deadlocked.

9 THE COURT: Thank you, Juror No. 281.

10 Juror No. 13, do you believe that there is a
11 probability that the jury can reach a verdict within a
12 reasonable time? Or do you believe that the jury is
13 hopelessly deadlocked on Count 1?

14 JUROR NO. 13: We are deadlocked, Your Honor.

15 THE COURT: Thank you, Juror No. 13.

16 Juror No. 283, do you believe that there is a
17 probability that the jury can reach a verdict within a
18 reasonable time? Or do you believe that the jury is
19 hopelessly deadlocked on Count 1?

20 JUROR NO. 283: No, Your Honor. This jury is
21 hopelessly deadlocked.

22 THE COURT: Thank you, Juror No. 283.

23 Juror 228, do you believe that there is a
24 probably that the jury can reach a verdict within a
25 reasonable time as to Count 1? Or do you believe that

1 the jury is hopelessly deadlocked on Count 1?

2 JUROR No. 228: The jury is hopelessly
3 deadlocked on Count 1.

4 THE COURT: Thank you, Juror No. 228. If you
5 would hand the -- yes to 284.

6 Juror No. 284, do you believe that there is a
7 probability that the jury can reach a verdict within a
8 reasonable time? Or do you believe that the jury is
9 hopelessly deadlocked on Count 1?

10 JUROR NO. 284: We're hopelessly deadlocked.

11 THE COURT: Thank you, Juror No. 284.

12 Juror No. 237, do you believe that there is a
13 probability that the jury can reach a verdict within a
14 reasonable time? Or do you believe that the jury is
15 hopelessly deadlocked on Count 1?

16 JUROR NO. 237: Hopelessly deadlocked.

17 THE COURT: Thank you, Juror No. 237.

18 Juror No. 6, do you believe that there is a
19 probability that the jury can reach a verdict within a
20 reasonable time as to Count 1? Or do you believe that
21 the jury is hopelessly deadlocked on Count 1?

22 JUROR NO. 6: Hopelessly deadlocked.

23 THE COURT: Thank you, Juror No. 6.

24 Well, the Foreperson has already reported.

25 Juror No. 29, do you believe that there is a

1 probability that the jury can reach a verdict within a
2 reasonable time? Or do you believe that the jury is
3 hopelessly deadlocked on Count 1?

4 JUROR NO. 29: Hopelessly deadlocked, Your
5 Honor.

6 THE COURT: Thank you, Juror No. 29.

7 Juror No. 286, do you believe that there is a
8 probability that the jury can reach a verdict within a
9 reasonable time as to Count 1? Or do you believe that
10 the jury is hopelessly deadlocked on Count 1?

11 JUROR NO. 286: Hopelessly deadlocked.

12 THE COURT: Thank you, Juror No. 286.

13 Juror No. 57, do you believe that there is a
14 probability that the jury can reach a verdict within a
15 reasonable time? Or do you believe the jury is
16 hopelessly deadlocked on Count 1?

17 JUROR NO. 57: We are hopelessly deadlocked.

18 THE COURT: Thank you, Juror No. 57.

19 Rule 26.3 of the Federal Rules of Criminal
20 Procedure requires the Court to provide an opportunity
21 for all parties to comment prior to the order of
22 mistrial, including whether each party consents, or
23 objects, to a mistrial, and to suggest other
24 alternatives.

25 At this time, Mr. Davies, do you wish to

1 object, or consent, to the declaration of a mistrial as
2 to Count 1 of the Indictment?

3 MR. DAVIES: Nothing further. I consent.

4 THE COURT: Thank you, Mr. Davies.

5 Mr. Kernell, do you consent to a mistrial as to
6 Count 1 of the Indictment?

7 MR. KERNELL: Yes, I do, Your Honor.

8 THE COURT: Thank you, Mr. Kernell.

9 Mr. Weddle, what is the position of the
10 Government with regard to Count 1 of the Indictment?

11 MR. WEDDLE: We likewise consent, Your Honor.

12 THE COURT: Thank you, Mr. Weddle.

13 A mistrial is not to be declared unless; number
14 one, there is manifest necessity for termination of the
15 proceedings; or number two, the ends of public justice
16 would otherwise be defeated.

17 Before declaring a mistrial, the United States
18 Supreme Court has indicated that a trial judge must
19 consider all the procedural alternatives to a mistrial.
20 And after finding none of them to be adequate, make a
21 finding of manifest necessity for the declaration of a
22 mistrial.

23 The general rule followed by the Sixth Circuit
24 Court of Appeals is that manifest necessity for the
25 declaration of a mistrial may be found in the inability

1 of a jury to reach a verdict.

2 The Court has carefully considered all
3 procedural alternatives to a mistrial on Count 1 in this
4 case, and has found none to be adequate.

5 The Court has provided an opportunity for all
6 parties to comment on the propriety of that order of
7 mistrial as to Count 1, including whether each party
8 consents, or objects, to the mistrial, and to suggest
9 other alternatives.

10 The Court has collectively and individually
11 inquired of the jury whether they believe there is a
12 probability that the jury can reach a verdict within a
13 reasonable time as to Count 1 of the Indictment, or
14 whether it is hopelessly deadlocked. And each juror has
15 declared in open court that the jury is hopelessly
16 deadlocked on Count 1, and there is no probability that
17 the jury can reach a verdict within a reasonable time.

18 Accordingly, the Court finds that the manifest
19 necessity for the declaration of a mistrial as to
20 Count 1 of the Indictment in this case, has been
21 established by the inability of the jury to reach a
22 verdict, and that the ends of public justice would
23 otherwise be defeated should a mistrial not be declared
24 in this case, as to Count 1 of the Indictment.

25 This case took four days to try. And the jury

1 has deliberated now for almost five days. Manifest
2 necessity and the ends of public justice require the
3 declaration of a mistrial as to Count 1 of the
4 Indictment in this case, at this time.

5 Thank you, very much, Ladies and Gentlemen of
6 the Jury, for your attentiveness and for all your
7 assistance in carrying out the cause of justice in this
8 case.

9 Mr. Davies, are you aware of any reason why
10 this jury should not be discharged at this time?

11 MR. DAVIES: No, Your Honor.

12 THE COURT: Mr. Weddle, are aware of any reason
13 why this jury should not be discharged at this time?

14 MR. WEDDLE: None, Your Honor.

15 THE COURT: Ladies and Gentlemen of the Jury,
16 the verdict you have rendered in this case is your
17 business, and you do not have to discuss it with any
18 one.

19 My personal feeling is, if I were a juror, I
20 would not discuss my verdict publicly. However, I will
21 not instruct you not to discuss the case if you want to
22 do so.

23 Please be aware, however, that I have not given
24 the lawyers in this case permission to talk to you about
25 the case.

1 Counsel, I want to direct your attention to
2 Local Rule 48.1, which prohibits your contacting, or
3 talking, with any juror without prior leave of the
4 Court. I do not grant such leave at this time, or in
5 this case.

6 Ladies and Gentlemen of the Jury, you are
7 discharged at this time. If you'll call back in, the
8 Jury Clerk will let you know when to return. And have a
9 good weekend.

10 DEPUTY CLERK: All rise.

11 (Jury is discharged.)

12 THE COURT: Okay. Ladies and gentlemen, if you
13 will be seated.

14 Madam Clerk, if you would show the Verdict Form
15 first to counsel for the defendant, and then to counsel
16 for the Government.

17 Counsel, if you would like a copy of the
18 Verdict Form, the Clerk would be glad to make a copy for
19 you.

20 Counsel, I have been provided the following
21 dates for sentencing. However, I guess, Mr. Weddle, a
22 decision will have to be made as to whether the
23 Government wishes to pursue Count 1 of the Indictment.
24 How much time will you need to make that decision?

25 MR. WEDDLE: Your Honor, if I could have --

1 would it be possible to have at least through Wednesday
2 of next week?

3 THE COURT: Mr. Davies?

4 MR. DAVIES: That's fine, Your Honor. However
5 much time he needs.

6 THE COURT: Do you need more time than that,
7 Mr. Weddle?

8 MR. WEDDLE: Well, if I could have more time, I
9 would like until the end of week. Because there are
10 obviously a number of factors to be considered, and a
11 number of folks to discuss this with.

12 THE COURT: Okay. Why don't you make the
13 filing with the Court then by close of business hours
14 next Friday.

15 MR. WEDDLE: That would be fine, Your Honor.

16 THE COURT: And send a copy, of course, to
17 Mr. Davies, so he will be apprised of what the
18 Government needs to do.

19 MR. WEDDLE: Yes, Your Honor.

20 THE COURT: And I think, Counsel, we probably
21 should wait on a sentencing date until that decision has
22 been made.

23 MR. WEDDLE: Yes, Your Honor.

24 THE COURT: Mr. Davies?

25 MR. DAVIES: I think that's appropriate, Your

1 Honor. We need to know which way we're going. That
2 would be fine.

3 THE COURT: Okay. Now, is there any objection,
4 Mr. Weddle, to the defendant remaining on the same bond
5 that he is under currently?

6 MR. WEDDLE: No, Your Honor.

7 THE COURT: I do not have his bond conditions
8 before me. I forgot to bring that. Does anybody have a
9 copy of the bond conditions?

10 DEPUTY CLERK: I can get a copy of that.

11 THE COURT: Will you pull it up for me, please?

12 DEPUTY CLERK: Yes, Your Honor.

13 THE COURT: Okay. Mr. Kernell, let's review
14 your conditions of release. First of all, you must
15 report to your probation officer as directed. You must
16 surrender any passport to your probation officer. I
17 would assume that you've already done that.

18 MR. KERNELL: Yes, sir.

19 THE COURT: And you must not obtain any
20 additional passport. Travel is restricted to the
21 Eastern District of Tennessee, unless approved in
22 advance by your probation officer. However, the Court
23 did allow you to travel to Hawaii to visit your mother.
24 But you did get permission to do that before you left.

25 You must avoid all contact with Governor Palin

1 or her family. You must refrain from possessing a
2 firearm, destructive device, or other dangerous weapon.
3 You must refrain from excessive use of alcohol, and you
4 must report any contact with law enforcement with your
5 probation officer.

6 You shall not own, or possess, a computer, nor
7 access the internet other than e-mail or specific
8 college class assignments. And no driving, unless you
9 have a valid license.

10 Well, those conditions appear to be reasonable.
11 And I think we will keep them as they are.

12 Mr. Kernell, remember that it is very important
13 for you to comply with the order setting the conditions
14 of your release. Because if you don't, then of course
15 I'll have to revoke your bond. And you don't want that
16 to happen.

17 Okay. Anything further we need to take up at
18 this time on behalf of the Government, Mr. Weddle?

19 MR. WEDDLE: No, Your Honor.

20 THE COURT: Anything further, Mr. Davies?

21 MR. DAVIES: No, Your Honor.

22 THE COURT: We'll stand adjourned.

23 DEPUTY CLERK: All rise. This Honorable Court
24 stands adjourned.

25 (END OF PROCEEDINGS.)

1 REPORTER'S CERTIFICATE

2 STATE OF TENNESSEE)

3 COUNTY OF BLOUNT)

4 I, Dana Holloway, Certified Court Reporter
5 and Notary Public in and for the County of Blount, State
6 of Tennessee, do hereby certify:

7 That I reported stenographically the
8 proceedings held in open court on the 30th day of April,
9 2010; that said proceedings in connection with the
10 hearing were reduced to typewritten form by me; and that
11 the foregoing transcript is a true and accurate record
12 of said proceedings to the best of my knowledge, skills,
13 and ability.

14 I further certify that I am not kin to any of the
15 parties involved therein nor their counsel, and I have
16 no financial or otherwise interest in the outcome of
17 these proceedings whatsoever.

18 This the 31st day of December, 2010.

19
20 _____
21 Dana Holloway, LCR #11, CCR #455, CIR
22 Expiration Date 7/1/2012
23 Notary Public Commission Expires 2/25/2014
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26 Knoxville, TN 37934
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29